

6 - Effective participation of children in the trial

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Article 12 of the Convention on the Rights of the Child sets out the principle that every child under the age of 18 must have the right to participate effectively in matters affecting him/her. This is reaffirmed in the Beijing Rules (14.2), as well as in General Comment No. 24 of the UN Committee on the Rights of the Child.

Proceedings against a juvenile must be carried out taking into account his/her age. In all written and oral communication with the juvenile, the court must use simple and accessible language (see 5.4). The participation of the child in the proceedings against him/her is a general rule, as is the presence of the defender and the legal representative as aides.

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6.1 Right to appear in person at the trial

The direct participation of the child in criminal proceedings concerning him/her is a general rule, but Section 691(2) of the Criminal Procedure Act stipulates that the court may order that the part of the trial which adversely affects the development of the juvenile in a suitable direction be held in the absence of the juvenile. For example, such a situation may occur when information concerning his/her health or situation or that of his/her relatives may arise, which may have an adverse effect on the juvenile's mental health.

The court may even decide to remove the juvenile during the hearing (Section 460 of the Criminal Procedure Act). In this case, too, it is important that the chair of the panel explain the substance of the hearing held in absentia to the juvenile at the latest by the time the evidentiary proceedings are declared closed. Failure to do so constitutes a procedural irregularity.

Apart from these exceptions, the juvenile attends the hearing in person. His/her right to participate is reinforced by the mandatory presence of the defence counsel during the trial and the possibility for the young person's legal representative to attend as an aide.

It is an essential requirement that the juvenile, if he/she decides to make a statement, should be given the opportunity to make a coherent statement of what he/she wishes to say, followed by questions from the judge, which should be short and clear, adapted to the juvenile's level of understanding. In the case of a juvenile accused, there is therefore no possibility for the so-called "cross-examination" of the defendant by the parties.

To participate in the procedural act, the child offender aged 12 to 14 is summoned through his/her legal representative who is obliged to ensure the presence of the juvenile. In the case of a juvenile aged 14 to 18, the legal representative (the adult person taking care of the child) is also notified.

6.2 Right to privacy

The openness of the trial is one of the most important principles of criminal proceedings. However, based on Section 691(1) of the Criminal Procedure Act, the judicial practice has adopted the position that a closed trial must be held in all cases where the openness of the trial would in any way endanger the juvenile's development. Moreover, at public hearings, recording is only possible with the permission of the chair of the panel.

Such authorisation is subject to the consent of the persons appearing in the recording and participating in the proceedings.

In absence of the juvenile defendant's consent, a recording may be made only in case of a serious crime and only with the permission of the chair of the panel. What constitutes a "serious crime" is entirely at the discretion of the court. It is for them to decide on the basis of which criteria they will allow the recording to be made and thus making the juvenile identifiable.

In contrast to that, access to the file of a case against a juvenile offender that has already been closed by the court may only be granted to journalists by the president of the court in question, not by the chair of the panel hearing the case. However, if the court has excluded the public from all or part of the trial, no recording may be made, and journalists may not subsequently have access to the file.

According to the provisions of Act V of 2013 on the Civil Code, the right to disclose a photograph or sound recording is a personal right. However, in the case of a juvenile defendant, the chair of the panel must obtain a statement from the legal representative as to whether or not he/she authorises the making of a recording. If the legal representative is not present at the hearing, the court may not authorise the recording until the necessary statement has been obtained, even if the juvenile defendant otherwise consents.

6.3 Right to the presence of a legal representative

The presence of a legal representative in juvenile criminal proceedings ensures the safeguarding of the interests of the juvenile. The concept of a legal representative is defined in Chapter 4 of Section 146(1) of Act V of 2013 of the Civil Code, according to which a child is either under parental supervision or in guardianship. It follows from that that if the accused is under the parental supervision of both parents, either of them may act as a legal representative. They may also exercise their respective rights alternately.

The legal representative may take part in the proceedings as an aide (Section 59 of the Criminal Procedure Act) and is responsible for representing or defending the rights and legitimate interests of the juvenile in criminal proceedings and for facilitating the exercise of rights and the performance of obligations. Under the Hungarian legislation in force, in addition to the legal representative, the juvenile may also be assisted in criminal proceedings by his/her adult relative or by an adult person

who looks after the juvenile.

Since the enforcement of the child's right to effective participation may be a serious challenge for the courts in consideration of the individual circumstances of each case, it is worth referring to relevant European case law: the case of T vs UK (on proceedings sensitive to the situation and needs of the child and the possibility of excluding the public in juvenile cases), and Panovits vs Cyprus (on the role of the legal representative).

Further reading

Dr. A. Nagy – Dr. M. Gál Nagy: A fiatalkorúak elleni büntetőeljárás sajátosságai [The Specificities of Juvenile Criminal Proceedings]. Source: <https://ujbtk.hu/>

Dr. Barnabás Turi: A fiatalkorúak bíróságának eljárásai, annak sajátosságai. [The Procedure and Specificities of the Juvenile Court]. Source: <https://ujbtk.hu/>

Panovits vs Cyprus case. Source: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%2201-90244%22%5D%7D>

T vs UK case Source: <https://archive.crin.org/en/library/legal-database/t-and-v-v-united-kingdom.html>

Act LXIV of 1991 on the promulgation of the UN Convention on the Rights of the Child

General Comment No. 24 of the UN Committee on the Rights of the Child

Act XXXI of 1993 on the promulgation of the European Convention on Human Rights

Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspect or accused persons in criminal proceedings

Act C of 2012 on the Criminal Code

Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention of Misdemeanours

Act XC of 2017 on the Code of Criminal Procedure